

Award No. 16

Case No. 16

PUBLIC LAW BOARD NO. 4244

PARTIES ) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
TO ) AND  
DISPUTE ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**STATEMENT OF CLAIM:** Carrier's decision to remove former New Mexico Division Group 5 Operator G. E. Thompson from service, effective July 7, 1987, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Thompson to service with his seniority rights unimpaired and compensate him for all wages lost from July 7, 1987.

**FINDINGS:** This Public Law Board No. 4244 (the "Board"), upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute former New Mexico Division Group 5 Operator G.E. Thompson (the "Claimant") was notified to attend a formal investigation on July 7, 1987, concerning his alleged absence without proper authority and falsely claiming time not worked on June 15, 1987, when headquartered at Rincon, New Mexico, in possible violation of Rules B, 604, 607 and 671, Rules Maintenance of Way and Structures, Form 1015 Std., effective October 28, 1985. Pursuant to the investigation the Claimant was found guilty of violating Rules B, 604, 607 and 671, and his personal record was assessed thirty (30) demerits.

It was developed at the investigation that the Claimant's assigned hours on June 15, 1987, were 7:30 a.m. to 4:00 p.m. Roadmaster B.L. Carder testified that the Claimant did not report for work until approximately 9:30 a.m. and the Claimant did not have permission to be late. To the best of his knowledge, the Claimant did not work the hours as claimed for June 15.

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Track Supervisor A.G. Martinez testified that the Claimant reported for work at Rincon at 9:30 a.m. on June 15, 1987. He also testified that the Claimant was not instructed to work past his normal work time. Thus, the Claimant was not authorized to work beyond 4:00 p.m.

Time records were introduced by the Carrier which showed that the Claimant had claimed one hour travel time and seven hours pay on June 15, 1987. The time records also showed that the Claimant had previously claimed travel time to Rincon on June 12, 1987.

The Claimant testified at the investigation that he worked from 9:30 a.m. until 4:30 p.m. and observed a 30 minute lunch period on June 15. The Claimant further admitted that he was responsible for keeping his own time, and he was not authorized to work beyond his assigned hours on June 15. He also testified that he claimed eight hours pay for June 15 when he performed only six hours of work during his regularly assigned hours.

As a result of finding the Claimant guilty of violating Rules B, 604, 607 and 671 for his failure to properly protect his position at the assigned starting time and for claiming time for work not performed, the Claimant was assessed thirty (30) demerits. The Claimant was subsequently dismissed from the Carrier's service on July 7, 1987, for an accumulation of excessive demerits pursuant to Rule 31-H of the Carrier's General Rules for the Guidance of Employees and a Letter of Understanding dated April 16, 1979.

The Board has reviewed the evidence of record and finds that the Claimant was given a fair and impartial investigation and that the assessment of thirty (30) demerits was not excessive discipline. The Board further finds that the Claimant's total of demerits was in excess of sixty. Accordingly, the Carrier had the right to remove the Claimant from service.

The Organization alleged that the Claimant was assessed sixty (60) demerits by the Carrier on July 7, 1987, in violation of Carrier's Rule 31(F) which read in pertinent part: "When demerits are issued, no less than five nor more than thirty demerits will be assessed against an employee's record at one time." The Board finds that this allegation is without merit. The records of this case and Case No. 15 of this Board show that the Claimant was issued 30 demerits each for two separate rules violations which were developed and proven in separate investigations. Moreover, the investigations were held on the same day at the Organization's request.

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AWARD: Claim denied.

Alan J. Fisher

Alan J. Fisher, Chairman  
and Neutral Member

C. F. Foose

Clarence F. Foose  
Organization Member

Lyle L. Pope

Lyle L. Pope  
Carrier Member

Dated: May 26, 1988  
Chicago, Illinois